

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**

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KARA MCCLAUGHLIN,	*	
	*	
Petitioner,	*	No. 08-747V
	*	Special Master Christian J. Moran
v.	*	
	*	
SECRETARY OF HEALTH	*	Filed: August 10, 2009
AND HUMAN SERVICES,	*	
	*	influenza vaccine; loss of conscious-
Respondent.	*	ness, residual injuries, ruling on
	*	entitlement, respondent does not
	*	contest.

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Dain A. Dreyer, Law Offices of Dain Dreyer, San Antonio, TX for petitioner;  
Voris E. Johnson, Jr., United States Dep't of Justice, Washington, D.C. for respondent.

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**UNPUBLISHED RULING ON ENTITLEMENT\***

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On October 21, 2008, Kara McLaughlin filed a petition for compensation alleging that the influenza vaccination which she received on October 21, 2005, caused her to suffer a loss of consciousness while she was driving which led to a number of residual injuries. She seeks compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006).

Respondent has chosen not to contest entitlement. Special masters may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. 42 U.S.C. § 300aa-13; Vaccine Rule 8(d).

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\* Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

Although the Vaccine Act contains a table in which certain injuries are presumed to be caused by certain vaccines, petitioner may not take advantage of any presumption because the influenza vaccine is not associated with any injury. 42 C.F.R. § 100.3(a); see also 70 Fed. Reg. 19092 (adding trivalent influenza vaccine to the table). Under these circumstances, petitioner bears the burden of establishing that the influenza vaccine caused the injury for which she seeks compensation. Althen v. Sec’y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Proof of medical certainty is not required; a preponderance of the evidence suffices. Bunting v. Sec’y of Health and Human Servs., 931 F.2d 867, 873 (Fed. Cir. 1991).

Under the statute, the court cannot grant a petitioner compensation based solely on the petitioner’s allegations. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1).

Ms. McLaughlin received her first flu vaccination on October 21, 2005 at approximately 9:20 A.M. See Petition at 1, Pet.’r Ex. A. Within 30 minutes of the vaccination, Ms. McLaughlin lost consciousness and drove her vehicle into a concrete median at a high rate of speed. Id. As a result of the vehicle collision, Ms. McLaughlin suffered severe injuries resulting in a 6 week hospitalization. Ms. McLaughlin’s gall bladder and kidney was removed and she suffered a laceration of her liver, and a severe foot/ankle fracture resulting in a permanent limp. Id.

In support of her petition, Ms. McLaughlin presented the expert report of Dr. Donald H. Marks. See Pet.’r Ex. B. Dr. Marks opined that Ms. McLaughlin’s loss of consciousness was causally related to her receipt of the influenza vaccine. Id. Dr. Marks also references and discusses five pieces of medical literature to support of the medical plausibility of a causal connection between Ms. McLaughlin’s loss of consciousness and the influenza vaccine.

Ms. McLaughlin had no antecedent illness or other discernible cause of her loss of consciousness. A preponderance of the evidence also suggests that the onset of Ms. McLaughlin’s symptoms fall within a the time expected by medical science.

Furthermore, respondent has opted not to contest this matter further by obtaining an expert or by challenging the evidence contained in the record. Therefore, after considering the evidence, the Court finds that petitioner has established that she is entitled to compensation.

Any questions may be directed to my law clerk, Francina Segbefia, at (202) 357-6358.

**IT IS SO ORDERED.**

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Christian J. Moran  
Special Master